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IN THE

# Supreme Court of the United States

October Term, 1965

No. 1143

JERRY LYNN WINTERS,
*Appellant,*

v.

THE STATE OF WASHINGTON
*Appellee.*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

## JURISDICTIONAL STATEMENT

GEORGE R. MOSLER
*Attorney for Appellant*

Office and P. O. Address:
2207 Northern Life Tower
Seattle, Washington 98101

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## CONSTITUTIONAL PROVISIONS

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

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## JURISDICTIONAL STATEMENT

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This proceeding is an appeal by the appellant, JERRY LYNN WINTERS, from a final decree of the Supreme Court of the State of Washington, which decree or judgment affirmed the judgment of the Superior Court of the State of Washington for King County, which found the appellant, JERRY LYNN WINTERS, guilty of two counts of peddling without a license as required by the statutes of the State of Washington.

The date of the final decree or judgment aforesaid herein sought to be reveiewed from the date of its entry is November 18, 1965. The date of the order denying a rehear-

ing is December 21, 1965, and the notice of appeal herein was filed in the Supreme Court of the State of Washington on the 7th day of February, 1966, or within ninety (90) days after the entry of said order.

The statutory provision believed to confer on this court jurisdiction of this appeal is U.S.C. 28; 1257 (2).

## OPINIONS BELOW

The official report of the opinion delivered by the Supreme Court of the State of Washington is contained in Volume 67 2d No. 8 of Washington Decisions, pp. 455-458.

The text of said opinion is set forth in Appendix A to this statement. The trial court's opinion (Superior Court of King County, Washington) is unreported.

## JURISDICTION

The foregoing sections of the Statutes of the State of Washington are believed to conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States, Appendix C and as applied to the alleged crime herein.

> RCWA 36.71.010: *"Peddlers' license — 'Peddler' defined.* The term 'peddler' for the purpose of this chapter includes all persons, both principals and agents, who go from place to place and house to house, carrying for sale and offering for sale or exposal for sale, goods, wares, or merchandise except agricultural, horticultural, or farm products, which they may grow or raise, and except vendors of books, periodicals, or newspapers: *Provided,* That nothing

in this chapter shall apply to peddlers within the limits of any city or town which by ordinance regulates the sale of goods, wares, or merchandise by peddlers."

RCWA 36.71.020: "*Application for and issuance of license.* Every peddler, before commencing business in any county of the state, shall apply in writing and under oath to the county treasurer of the county in which he proposes to operate for a county license. The application must state the names and residences of the owners or parties in whose interest the business is to be conducted, and shall state the number of horses and/or vehicles to be used. Applicant at the same time shall file a true statement under oath of the quantity and value of the stock of goods, wares, and merchandise that is in the county for sale or to be kept or exposed for sale in the county, make a special deposit of five hundred dollars with the county treasurer, and pay the treasurer the county license fee as follows:

"(1) Peddler on foot, one hundred dollars.

"(2) Peddler with one horse and a wagon, one hundred fifty dollars.

"(3) Peddler with two horses and a wagon, two hundred fifty dollars.

"(4) Peddler with any other conveyance, three hundred dollars.

"The county treasurer shall thereupon issue to the applicant a peddler's license, authorizing him to do business in the county for the term of one year from the date thereof. Every county license shall contain a copy of the application therefor, shall not be transferrable, and shall not authorize more than one person to sell goods as a peddler, either by agent or clerk, or in any other way than his own proper person."

RCWA 36.71.060: "*Penalty for peddling without license.* Every peddler who sells or offers for sale or

exposes for sale, at public or private sale any goods, wares, or merchandise without a county license, shall be punished by imprisonment for not less than thirty days nor more than ninety days or by fine of not less than fifty dollars nor more than two hundred dollars or by both.'"

RCWA; 36.71.070: *"Hawkers, auctioneers and barterers must procure license — Exceptions.* If any person sells any goods, wares, or merchandise, at auction or public outcry, or barters goods, wares or merchandise from traveling boats, wagons,, carts or vehicles of any kind, or from any pack, basket or other package carried on foot without first having obtained a license therefor from the board of county commissioners of the county in which such goods are sold or bartered, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than fifty dollars, and shall stand committed to the county jail of the county in which the conviction is had until such fine and cost of prosecution are paid, or discharged by due course of law; *Provided*, That this section shall not be construed as to apply to any seagoing craft or to administrators or executors selling property of deceased persons, or to private individuals selling their household property, or furniture, or farming tools, implements, or livestock, or any produce grown or raised by them, either at public auction or private sale."

RCWA 36.71.090: *"Farmers, gardeners, etc. peddling own produce exempt from license requirements.* It shall be lawful for any farmer, gardener, or other person, without license, to sell, deliver, or peddle any fruits, vegetables, berries, butter, eggs, fish, milk, poultry, meats, or any farm produce or edibles raised, caught, produced, or manufactured by such person in any place in this state each and every day except Sundays, and no city or town shall pass or enforce any ordinance prohibiting the sale by or requiring license from the producers and manufacturers of farm prod-

uce and edibles as herein defined, and all city or town ordinances in violation hereof are hereby declared void: *Provided*, That this section shall not prohibit the sale or delivery of dairy products on Sunday."

## STATEMENT OF THE CASE

The appellant was originally charged in Roxbury District Justice Court for King County, on February 26, 1964, with peddling without a county license and failure to post the required bond in violation of RCW 36.71.010, *et seq.* A like charge was filed in the Renton District Justice Court for King County, on March 14, 1964. Upon motion for change of venue by the appellant, both cases were removed from their respective courts and assigned to a Justice of the Peace in Seattle District for King County. The cases were consolidated for trial before the Justice Court in Seattle District and heard on May 28, 1964. The evidence showed that the appellant purchased boxes of candy at wholesale and had enlisted groups of teenage boys to go on foot from house to house, offering the same for sale. On the dates referred to in the Justice Court complaints, these young boys, at the behest and under the supervision of the appellant, peddled on foot in King County, Washington, and without complying with the requirements of RCW 36.71.010, *et seq.* Appellant was found guilty in both cases and sentenced. Timely appeal was taken by the appellant to the Superior Court for King County, Washington. At the trial *de novo* before the Superior Court for King County, Washington, the same evidence was adduced on behalf of the state as in the Justice Court action. Judgment and sentence was rendered in the

Superior Court on February 25, 1965; the appellant was sentenced to pay a fine of $50.00 for each of the two offenses. with one of the fines being suspended. See Appendix B attached hereto.

At the trial of both causes before the Justice Court, and as well as in the Superior Court, the appellant admitted the peddling violation and that he had not posted the $500.00 bond or acquired the county license for himself or his agents. Appellant, at both trials, questioned and contested the constitutionality of RCW 36.71.010, *et seq.*

On November 18, 1965, the Supreme Court of the State of Washington affirmed the decision of the lower court and on December 21, 1965, a petition for rehearing was denied.

## QUESTION PRESENTED

Do the foregoing statutes of the State of Washington deny the appellant equal protection of the laws as guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States?

The decision of the Supreme Court of the State of Washington stated that all of the contentions made in this action have heretofore been made and answered in cases cited, to-wit: *Ex parte Crowder*, 171 Fed. 250 (1909); *McKnight v. Hodge*, 55 Wash. 289, 104 Pac. 504 (1909); *State v. Sheppard*, 79 Wash 328, 140 Pac. 332 (1914); and *Larson v. Shelton*, 37 Wn.2d 481, 224 P.2d 1067 (1950).

In the lower court, as well as in the State Supreme

Court, the constitutionality of the Act with reference to Section 1 of the Fourteenth Amendment of the Constitution of the United States was raised, this question also having been raised in the cited cases.

The appellant respectfully represents that the questions involved in his appeal to the Supreme Court of the United States are of substantial nature.

The issue raised by the appellant's contention that the State of Washington's statutes here in question violate the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, involves the problem of discriminatory classification.

## ARGUMENT

The Act provides for a $100.00 license fee for a peddler on foot, $150.00 license fee for a peddler with one horse and wagon, $250.00 for a license for a peddler with two horses and wagon, and $300,00 for a peddler with any other conveyance. Another section of the statute fixes the license fee at $25.00 per year for persons selling goods, wares, or merchandise at auction or public outcry, or merchandise from traveling boats, wagons, carts or vehicles of any kind. Another section of the statute exempts farmers and gardeners and other persons selling their own produce from paying any license fee or even obtaining a license. Another section of the statute exempts persons selling periodicals and books from the peddling statute.

It costs no more to issue a license for a foot peddler than it does for one who has a wagon with one horse or

two horses, or a motorcycle or automobile, nor does it cost any more to issue a license to persons going about making outcry from a wagon or cart. Furthermore, peddlers who sell periodicals and books are exempt entirely. Also, the statutes require each person obtaining a peddler's license as per statute to post a $500.00 cash deposit to protect creditors. Yet, persons who are peddling other merchandise such as books and periodicals post no deposit, nor do persons who are selling their merchandise from traveling boats, wagons or carts have to post a cash deposit, nor is there any requirement for a merchant who sells from his store-place to post a deposit.

As shown in the foregoing, the Act is clearly discriminatory against one who goes about from house to house disposing of his merchandise.

## CONCLUSION

Therefore, the appellant, JERRY LYNN WINTERS, respectfully submits that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 344 (a) Title 28 of the United States Code.

Respectfully submitted,

GEORGE R. MOSLER
*Attorney for Appellant*

2207 Northern Life Tower
Seattle, Washington 98101
Telephone: MAin 3-2025

## APPENDIX A

### IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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| THE STATE OF WASHINGTON, *Respondent,* v. JERRY WINTERS, *Appellant.* | No. 38162 *En Banc* Filed Nov. 18, 1965 |

PER CURIAM.—JERRY LYNN WINTERS appeals from two convictions of peddling in King County without a license and with failure to post the required bond in violation of RCW 36.71.010 *et seq.*

The facts are not in dispute. If the statute under which Mr. Winters was prosecuted is constitutional, the convictions must stand.

Our county peddlers' statute (RCW 36.71.010 *et seq.*) is again under attack. All of the contentions here made (save one) have heretofore been made and answered in the cases cited[1] in Note 1.

The exception is the contention that Chapter 4, Laws of 1963, is unconstitutional, as being a violation of Art. II, §19, of the state constitution, which provides that:

> "No bill shall embrace more than one subject, and that shall be expressed in the title."

1. For earlier attacks see: *Ex parte Crowder*, 171 Fed. 250 (1909); *McKnight v. Hodge*, 55 Wash. 289, 104 Pac. 504 (1909); *State v. Sheppard*, 79 Wash. 328, 140 Pac. 332 (1914). It was again upheld in *Larson v. Shelton*, 37 Wn.2d 481, 224 P.2d 1067 (1950).

It has frequently been said[2] that the purposes of this section are to:

1. Protect members of the legislature against provisions in bills of which the title gives no intimation.

2. Apprise the public concerning subjects of legislation being considered.

3. Prevent hodgepodge or logrolling legislation.

With equal frequency it has been said[2] that a title complies with the constitution if it gives notice that would lead to an inquiry into the body of the act, or indicates to an inquiring mind its scope and purpose.

The title here in question reads:

> "COUNTIES—TITLE 36 RCW REENACTMENT.
> "An Act relating to state and local government; enacting a title of the Revised Code of Washington to be known as Title 36—Counties: providing penalties; repealing certain acts and parts of acts; and declaring an emergency." [Laws of 1963, Chapter 4, p. 13]

Notice was given by the title that this was a re-enactment of an entire title relating to counties. The act contained more than 220 printed pages and more than a thousand sections, with an explanatory note of 33 pages giving the changes of wording in each section where a change had been made and explaining why the change was made. For the most part, the changes were to restore the session-law language which had been changed without legislative authority by the 1941 code revisers.

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2. See *Young Men's Christian Association v. State*, 62 Wn.2d 504, 383 P.2d 497 (1963); *Miller v. Tacoma*, 61 Wn.2d 374, 378 P.2d 464 (1963), and cases cited therein.

Legislators and others interested were given notice by the title that this was a comprehensive re-enactment of RCW Title 36, relating to counties, and that it involved certain repeals. It was set up in such a format that anyone interested could, within 30 seconds, determine whether any section in which he was interested had been repealed, or whether its wording had been changed. All the notice relative to subject matter, that is practicable in the case of such a re-enactment and all that the constitutional provision requires, had been given.

Here a lengthy quotation from *Gruen v. State Tax Commission*, 35 Wn.2d 1, 211 P.2d 651 (1949), is apropos. It may be found under headings [7] and [8, 9] at pages 22 and 23 of 35 Wn.2d and under headings [8, 9] and [10-13] on page 664 of 211 P.2d. We will not repeat it here.

Nor is there merit in the further contention that when a title refers to the repeal of an act, it must specify what act is being repealed. In *Maxwell v. Lancaster*, 81 Wash. 602, 143 Pac. 157 (1914), we were concerned with an act creating a department of agriculture "and repealing certain acts and parts of acts." We there upheld a repeal, saying:

> "The legislature may, under a tital relating to a general subject, repeal existing laws as well as create new ones. . . ." [p. 607]

Moreover, we are not advised just how the unconstitutionality of Laws of 1963, Chapter 4, would in any way improve the situation of Jerry Lynn Winters. He was not charged with violation of any particular session law, but with the crime of peddling in King County without a

license, which, at all times material to this appeal, has been a public offense. He stands convicted of that offense. If Laws of 1963, Chapter 4, is unconstitutional, then the act against peddling without a license, which was in existence before the enactment of Laws of 1963, Chapter 4, has at all times been in effect and it interdicts peddling in any county without a license and without a bond.

For the reasons here and heretofore assigned, the constitutional attacks on our county peddlers' statute (RCW 36.71.010 *et seq.*) are without merit, and the conviction of Jerry Lynn Winters is affirmed.

## APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THE COUNTY OF KING

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| THE STATE OF WASHINGTON, *Plaintiff*, v. JERRY WINTERS, *Defendant*. | No. 41117 and 41118 No..... Judgment and Sentence |

The Prosecuting Attorney with the Defendant JERRY WINTERS and counsel George R. Mosler came into court. The defendant was duly informed by the court of the nature of the complaint found against him for the crime of Peddling Without a County License, Counts I and II, committed on the 14th day of March, 1964 of his arraignment and plea of "Not Guilty of each of the offense charged in the complaint", of his trial and the verdict of the court on the 8th day of February, 1965, "guilty of Peddling Without a County License, Counts I and II."

The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied he had none.

And no sufficient cause being shown or appearing to the court, the court renders its judgment: That whereas the said defendant having been duly convicted on the 8th day of February, 1965 in this court of the crime of Peddling Without a County License, Counts I and II, it is therefore Ordered, Adjudged and Decreed that the said defendant is guilty of the crime of Peddling Without a

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